

1 V. ANDREW CASS  
Nevada Bar No. 005246  
2 JOHN P. SKALAK  
Nevada Bar No. 004385  
3 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
6385 S. Rainbow Boulevard, Suite 600  
4 Las Vegas, Nevada 89118  
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Attorneys for USAA Casualty Insurance Company

7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 SIMONA FITZGERALD,,

11 Plaintiff,

12 v.

13 USAA CASUALTY INSURANCE COMPANY;  
14 JOHN DOES I-V, inclusive; and BLACK AND  
WHITE COMPANIES,,

15 Defendants.

CASE NO.

**DEFENDANT USAA CIC'S NOTICE OF  
REMOVAL**

16 TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

17 Defendant, USAA Casualty Insurance Company ("USAA CIC"), hereby removes to this Court  
18 the State Court action described below, and in support states as follows:

19 1. On April 6, 2010, Plaintiff filed an action in the District Court for Washoe County,  
20 Nevada, entitled *Simona Fitzgerald v. USAA Casualty Insurance Company*, Case No. CV10-01034.

21 (A copy of the complaint in the state court action is attached as "**Exhibit A**").

22 2. Plaintiff delivered the Summons and Complaint to the Nevada Commissioner of  
23 Insurance (the "Commissioner") on April 9, 2010, and the Commissioner forwarded the Summons and  
24 Complaint to USAA CIC by U.S. Mail on April 9, 2010. (A copy of the Proof of Service is attached  
25 as "**Exhibit B**").

26 3. This Notice is timely filed pursuant to 28 U.S.C. §1446(b), as USAA-CIC has filed  
27 this Notice within thirty days after receiving a copy of plaintiffs' complaint following proper  
28

1 service.

2 4. No further proceedings have been had in this matter in the District Court for Washoe  
3 County, Nevada.

4 6. This action is a civil action of which this Court has original jurisdiction under 28  
5 U.S.C. §1332, as there is complete diversity between the parties and more than \$75,000 in  
6 controversy, exclusive of interests and costs. Accordingly, pursuant to 28 U.S.C. §1441, USAA-  
7 CIC is entitled to remove this action to this Court.

8 7. The damages alleged by plaintiffs exceed \$75,000, exclusive of interest and costs.  
9 Plaintiff alleges that she suffered injuries and damages arising out of the subject automobile  
10 accident, plus damages from her dealings with USAA CIC regarding underinsured motor vehicle  
11 ("UIM") coverage, and/or claim handling of USAA CIC. As required by the Nevada Rules of Civil  
12 Procedure, Plaintiff's complaint generally alleges damages "in excess of \$10,000." Plaintiff  
13 additionally alleges in her complaint that the claim should be exempted from court-mandated  
14 arbitration in state court, "because plaintiff's past medical bills and future cost of surgery and  
15 debilitating permanent migraine headaches resulting [sic] disability caused by the collision, are in  
16 excess of \$50,000.00 and/or according to proof." *See, e.g., Exhibit A.* Plaintiff alleges in her  
17 complaint that USAA CIC breached its insurance contract, and additionally that it breached the  
18 covenant of good faith and fair dealing. *Id.* Plaintiff requests based on these two causes of action  
19 an award of general damages and special damages, plus court costs and disbursements. *Id.*

20 8. Before filing her complaint, Plaintiff demanded that USAA CIC tender and pay the  
21 \$100,000.00 policy limits from her UIM coverage to settle her claim. *See, Affidavit of John P.*  
22 *Skalak*, attached hereto as Exhibit C. Plaintiff filed suit after USAA CIC offered a lesser amount to  
23 settle the claim. *Id.*

24 9. Plaintiff was, during all relevant times, a resident of the State of Nevada. Defendant  
25 USAA CIC is, and was at the time this action was commenced, a corporation organized and existing  
26 under the laws of Texas, with its principal place of business in San Antonio, Texas. There is now,  
27 and there was at the time of the commencement of this action, complete diversity between the  
28 Plaintiff and all named Defendants.

1           10.     The action in state court was not commenced more than one year before the date of  
2 this removal.


3           11.     A true and correct copy of Defendant's Notice of Removal is being filed this date  
4 with the Clerk for the District Court, Washoe County, Nevada.

5           Based on the foregoing, Defendant USAA CIC removes this action, which is currently  
6 pending in the Nevada District Court, in and for the County of Washoe, as Case No. CV10-01034,  
7 to this Court.

8           Dated this 7<sup>th</sup> day of May, 2010.

9                                   LEWIS BRISBOIS BISGAARD & SMITH LLP

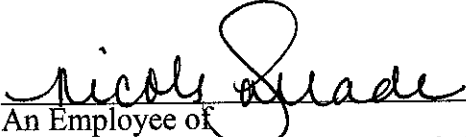
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11  
12 By

  
\_\_\_\_\_  
V. Andrew Cass, Esq.  
Nevada Bar No. 005246  
John P. Skalak, Esq.  
Nevada Bar No. 004385  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
*Attorneys for Defendant USAA Casualty Insurance  
Company*

**CERTIFICATE OF SERVICE**

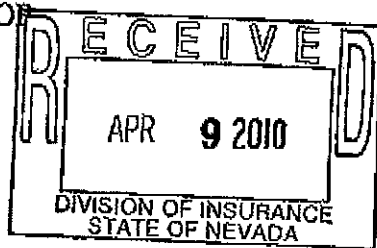
Pursuant to Fed. R.Civ. P. 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP and that on this 7 day of May 2010, I did cause a true copy of **DEFENDANT USAA CIC'S NOTICE OF REMOVAL** to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

Terry A. Friedman  
Julie McGrath Throop  
518 Pyramid Way  
Sparks, Nevada 89431  
Attorneys for Plaintiff

By   
An Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

# Exhibit A

1 CODE: \$1425  
2 TERRY A. FRIEDMAN  
3 BAR NO.: 1975  
4 JULIE McGRATH THROOP  
5 BAR NO.: 11298  
6 518 Pyramid Way  
7 Sparks, Nevada 89431  
8 (775) 322-6500  
9 Attorney for Plaintiff



**FILED**  
2010 APR -6 PM 4:08  
HOWARD W. CONYERS  
BY A. Smith  
DEPUTY

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF WASHOE**

\*\*\*\*\*

**SIMONA FITZGERALD,**

**Plaintiff,**

**vs.**

**USAA CASUALTY INSURANCE COMPANY;  
JOHN DOES I-V, inclusive; and BLACK  
AND WHITE COMPANIES,**

**Defendants.**

Case No.: **CV10 01034**

Dept. No.: **10**

**COMPLAINT**

Plaintiff, by and through undersigned counsel, herein complains and alleges as follows:

1. That at all times pertinent and material hereto, Plaintiff was and is a resident and domiciliary of the County of Washoe, State of Nevada.
2. That at all times pertinent and material hereto, Plaintiff and Defendant were acting within the physical boundaries of the State of Nevada.

LAW OFFICE OF TERRY A. FRIEDMAN  
ATTORNEYS AND COUNSELORS AT LAW  
518 PYRAMID WAY  
SPARKS, NEVADA 89431  
TELEPHONE (775) 322-6500

1                   3. That Defendants JOHN DOES I-V and BLACK AND WHITE COMPANIES  
2 are sued herein under fictitious names because the true names and capacities of said Defendants  
3 are not now known by Plaintiff, who asks leave of this Court to amend this Complaint to set forth  
4 the same at such time as they become known or ascertained. That the Defendants USAA  
5 CASUALTY INSURANCE COMPANY, JOHN DOES I-V, inclusive, and BLACK AND WHITE  
6 COMPANIES, unless otherwise specifically identified, are hereinafter referred to as "Defendant."

7  
8                   4. That on or about November 18, 2008, Plaintiff was injured in an automobile  
9 collision as a result of a third-party's negligence, causing her to sustain bodily injuries and damages  
10 in excess of \$10,000.00, and/or according to proof.

11  
12                  5. That as a direct and proximate result of the third-party's negligence, policy limits  
13 were tendered in favor of the Plaintiff, causing Defendant USAA CASUALTY INSURANCE  
14 COMPANY's under-insured motorist policy limits to become contractually owed.

15                  6. That demand has been made to the Defendant to tender policy limits, but the  
16 Defendant refuses, and continues to refuse, to pay the same.

17                  7. That the Defendant, upon information and belief, was acting by and through its  
18 duly authorized agents and/or employees and/or Defendant ratified the conduct of its agents and/or  
19 employees.  
20

21                  8. That upon information and belief, the conduct of the Defendant is negligent, a  
22 breach of contract, a breach of the duty of good faith and fair dealing, and a cause in fact and  
23 proximate cause of all damages herein alleged.

24                  9. That pursuant to the insurance contract, the parties, including the Defendant,  
25 have duties and/or covenants of good faith and fair dealing, and Defendant breached said  
26 covenants and contractual responsibility, and the Plaintiff has been damaged as herein alleged.  
27

28                  10. That the Plaintiff incurred general damages, including, but not limited to, pain,

1 suffering, aggravation, and the like in excess of \$10,000.00, and/or according to proof.

2 11. That the Plaintiff has incurred special damages, including, but not limited to, loss  
3 of earnings and earning capacity, medical expenses, and incidental damages, all past, present, and  
4 future, in excess of \$10,000.00 and/or according to proof.  
5

6 12. That this matter should be exempt from the arbitration program of this  
7 jurisdiction, because Plaintiff's past medical bills and future cost of surgery and debilitating  
8 permanent migraine headaches resulting disability caused by the collision, are in excess of  
9 \$50,000.00 and/or according to proof.  
10

11 13. That upon information and belief, the Defendant has an obligation contractually,  
12 in common law, and by Nevada statute, to evaluate, and pay contractual insurance benefits when  
13 owed, and the Defendant has failed to do so.  
14

15 WHEREFORE, the Plaintiff prays judgment as follows:

- 16 1. For general damages in excess of \$10,000.00 and/or according to proof.  
17 2. For special damages in excess of \$10,000.00 and/or according to proof.  
18 3. For exemption from the mandatory arbitration program.  
19 4. For court costs and disbursements.  
20

21 ///

22 ///

LAW OFFICE OF TERRY A. FRIEDMAN  
ATTORNEYS AND COUNSELORS AT LAW  
518 PYRAMID WAY  
SPARKS, NEVADA 89431  
TELEPHONE (775) 822-6500



5. For attorney's fees.
6. For jury trial.
7. For such other relief the Court deems proper in this matter.

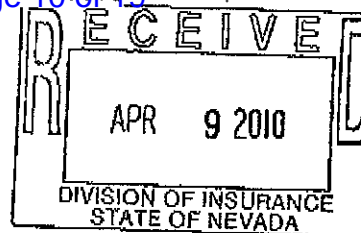
DATED this 22<sup>nd</sup> day of March, 2010.

LAW OFFICES OF TERRY A. FRIEDMAN

By: 

TERRY A. FRIEDMAN, ESQ.  
JULIE McGRATH THROOP, ESQ.  
518 Pyramid Way  
Sparks Nevada 89431  
(775) 322-6500  
Attorneys for Plaintiff

LAW OFFICE OF TERRY A. FRIEDMAN  
ATTORNEYS AND COUNSELORS AT LAW  
518 PYRAMID WAY  
SPARKS, NEVADA 89431  
TELEPHONE (775) 322-6500



1 CODE 4085

2  
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5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 SIMONA FITZGERALD,

9 Plaintiff,

10 vs.

Case No. CV10 01034

11 USAA CASUALTY INSURANCE COMPANY;  
12 JOHN DOES I-V, inclusive; and BLACK  
13 AND WHITE COMPANIES,

Dept. No. 10

14 Defendants.

15 SUMMONS

16 TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOU  
17 BEING HEARD UNLESS YOU RESPOND, IN WRITING, WITHIN 20 DAYS, READ THE INFORMATION BELOW  
18 VERY CAREFULLY.

19 A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see  
20 complaint or petition). When service is by publication, add a brief statement of the object of the action. See Rules of Civ  
21 Procedure, Rule 4(b). BREACH OF CONTRACT

22 1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons:  
23 exclusive of the day of service:

24 a. File with the Clerk of this Court, whose address is shown below, a *formal written answer* to the complaint or  
25 petition, along with the appropriate filing fees, in accordance with the rules of the Court.

26 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below  
27 2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment  
28 against you for the relief demanded in the complaint.

DATED: APR -6 2010

Issued on behalf of plaintiff(s) or plaintiff's(s')  
attorney:

HOWARD W. CONYERS,  
CLERK OF THE COURT

Name: THE LAW OFFICES OF TERRY  
A. FRIEDMAN

by A. Smith  
Deputy Clerk

Address: 518 Pyramid Way  
Sparks, NV 89431

Second Judicial District Court  
75 Court Street  
Reno, NV 89501

Phone Number: 775/322-6500

**AFFIDAVIT OF SERVICE**  
(For General Use)

STATE OF \_\_\_\_\_)

)ss.

COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn, deposes and says: That affiant is a citizen of the United States, over 18 years of age, and that affiant received the Summons on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and personally served \_\_\_\_\_ the within named defendant, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, by delivering a copy of the Summons attached to a copy of the Complaint.

\_\_\_\_\_  
Signature of Person Making Service

Subscribed and sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

**AFFIDAVIT OF MAILING**  
(For use when service is by publication and mailing)

STATE OF NEVADA )

)ss.

COUNTY OF WASHOE )

\_\_\_\_\_, being first duly sworn, deposes and says:

That on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, affiant deposited in the United States mail at Reno, Nevada, a copy of the within Summons and Complaint addressed to \_\_\_\_\_ the defendant at \_\_\_\_\_

Subscribed and sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public


Note: If service is made in any manner permitted by NRCP Rule 4, other than personally upon the defendant, or is made outside the United States, a special affidavit or return must be made.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirms that the within document does not contain the Social Security Number of any person.

Dated this 1st day of April, 2010.

LAW OFFICES OF TERRY A. FRIEDMAN

By:   
TERRY A. FRIEDMAN, ESQ.  
JULIE McGRATH THROOP, ESQ.  
518 Pyramid Way  
Sparks, NV 89431  
(775) 322-6500  
Attorneys for Plaintiff

# Exhibit B

JIM GIBBONS  
Governor

STATE OF NEVADA

SCOTT J. KIPPER  
Commissioner of Insurance

DIANNE CORNWALL  
Director



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

788 Fairview Drive, Suite 300  
Carson City, Nevada 89701-5491  
(775) 687-4270 • Fax (775) 687-3937  
Website: doi.state.nv.us  
E-mail: insinfo@doi.state.nv.us

April 9, 2010

Julie McGrath Throop, Esq.  
Law Offices of Terry A. Friedman  
518 Pyramid Way  
Sparks, NV 89431

RE: Simona Fitzgerald vs. USAA Casualty Insurance Company, et al.  
Second Judicial District Court, Washoe County, Nevada  
Case No. CV10 01034

Dear Ms. Throop:

The Division received the service of process documents on April 9, 2010 regarding the above-entitled matter. Service has been completed on defendant USAA Casualty Insurance Company this date and enclosed are the following:

1. A copy of our letter to USAA Casualty Insurance Company dated April 9, 2010;
2. A certified copy of the Proof of Service dated April 9, 2010; and
3. Your receipt in the amount of \$30.00.

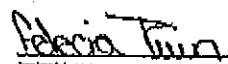
Pursuant to *Nevada Revised Statutes* 680A.260, 685A.200, and 685B.050, all documents after initial service of process may be served directly to the party.

If you have any questions regarding this service, please so advise.

Sincerely,

SCOTT J. KIPPER  
Commissioner of Insurance

By:

  
FELECIA TUIN

Service of Process Clerk

Enclosures

c: USAA Casualty Insurance Company

JIM GIBBONS  
Governor

STATE OF NEVADA

SCOTT J. KIPPER  
Commissioner of Insurance

DIANNE CORNWALL  
Director



Rec'd  
4/15/10

DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

788 Fairview Drive, Suite 300  
Carson City, Nevada 89701-5491  
(775) 687-4270 • Fax (775) 687-3937  
Website: doi.state.nv.us  
E-mail: insinfo@doi.state.nv.us

April 9, 2010

USAA Casualty Insurance Company  
Attn: Tom Strasburger, Esq.  
1855 Telstar Drive  
Colorado Springs, CO 80920

RE: Simona Fitzgerald vs. USAA Casualty Insurance Company, et al.  
Second Judicial District Court, Washoe County, Nevada  
Case No. CV10 01034

Dear Mr. Strasburger:

Enclosed please find the following documents: Summons and Complaint. These documents have been served upon the Commissioner of Insurance as your attorney for service of process on April 9, 2010.

The appropriate action should be taken immediately, as you may only have 30 days from the date of this service to respond.

If you have any questions regarding this service, please advise.

Sincerely,

SCOTT J. KIPPER  
Commissioner of Insurance

By:

A handwritten signature in cursive script, appearing to read "Felecia Tuin".  
FELECIA TUIN

Service of Process Clerk

Enclosures

c: Julie McGrath Throop, Esq.

**PROOF OF SERVICE**

I hereby declare that on this day I served a copy of the Summons and Complaint upon the following defendant in the within matter, by shipping a copy thereof, via certified mail, return receipt requested and postage prepaid, to the following:

USAA Casualty Insurance Company  
Attn: Tom Strasburger, Esq.  
1855 Telstar Drive  
Colorado Springs, CO 80920  
CERTIFIED MAIL NO: 7007 2560 0001 7600 1576

I declare, under penalty of perjury, that the foregoing is true and correct.

DATED this 9<sup>th</sup> day of April, 2010.

Felecia Tuin  
FELECIA TUIN  
Employee of the State of Nevada  
Department of Business and Industry  
Division of Insurance

RE: Simona Fitzgerald vs. USAA Casualty Insurance Company, et al.  
Second Judicial District Court, Washoe County, Nevada  
Case No. CV10 01034



State of Nevada, Division of Insurance  
The document on which this certificate  
is stamped is a full, true and correct  
copy of the original

Date: 4/9/10 By: Felecia Tuin



# Exhibit C

1 JOHN P. SKALAK  
Nevada Bar No. 004385  
2 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
6385 S. Rainbow Boulevard, Suite 600  
3 Las Vegas, Nevada 89118  
TEL: (702) 893-3383  
4 FAX: (702) 893-3789  
E-Mail: [skalak@lbbslaw.com](mailto:skalak@lbbslaw.com)  
5 Attorneys for USAA Casualty Insurance Company

6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 SIMONA FITZGERALD,,  
9

10 Plaintiff,

11 v.

12 USAA CASUALTY INSURANCE COMPANY;  
JOHN DOES I-V, inclusive; and BLACK AND  
13 WHITE COMPANIES,

14 Defendants.

CASE NO.

**AFFIDAVIT OF JOHN P. SKALAK**

15 STATE OF NEVADA )  
16 COUNTY OF CLARK ) ss.

17 I, John P. Skalak, being first duly sworn, do hereby state and attest as follows:

18 1. I am an attorney with the law firm of Lewis Brisbois Bisgaard & Smith LLP, counsel  
19 for Defendant USAA Casualty Insurance Company ("USAA CIC") in the instant matter.

20 2. I have first-hand knowledge of the matters attested to herein, and as to those matters,  
21 based upon information and belief, I believe them to be true. I am competent and willing to testify  
22 to those matters attested to herein if called upon to do so.

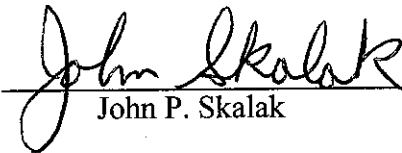
23 3. I have received from USAA CIC, and reviewed, documents comprising its claim file  
24 for Plaintiff's claim for benefits under her underinsured motor vehicle ("UIM") coverage with the  
25 company. In the claim file is a UIM claim demand letter from Plaintiff's counsel to USAA CIC,  
26 dated October 29, 2009, with hand written notation thereon that the letter was "resent 1/25/10."

27 4. Plaintiff's demand letter offers to compromise the UIM portion of her claim "for the  
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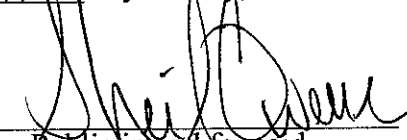
1 policy limits of \$1,000,000.00, which [plaintiff asserts] is inadequate considering the extent and  
2 permanency of her injuries and the severity of the collision.”

3 5. The claim file also contains correspondence from USAA CIC to Plaintiff’s counsel,  
4 dated February 15, 2010, responding to the demand letter received on 2/01/2010. USAA CIC  
5 conveyed a settlement offer of an amount less than plaintiff’s policy-limits demand in this  
6 correspondence.

7 6. Following some intervening telephone communications between USAA CIC and  
8 Plaintiff’s counsel, Plaintiff filed her lawsuit on April 6, 2010.

9  
10   
11 John P. Skalak

12 Subscribed and Sworn to before me  
13 this 17 day of May, 2010.

14   
15 Notary Public in and for said  
16 County and State

